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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 29, 1994

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: Reply Comments of the National Hockey League
MM Docket No. 92-266

Dear Mr. Caton:

Attached please find, on behalf of the National Hockey League, an original and four copies of its Reply Comments filed in MM Docket No. 92-266.

Should you have any questions regarding this filing, please contact the undersigned counsel.

Sincerely,

Philip R. Hochberg
Philip R. Hochberg

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DOCKET FILE COPY ORIGINAL RECEIVED
JUL 29 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections of) MM Docket No. 92-266
the Cable Television Consumer)
Protection and Competition)
Act of 1992: Rate Regulation)

**REPLY COMMENTS OF
THE NATIONAL HOCKEY LEAGUE**

The National Hockey League (hereinafter sometimes "NHL" or "the League") submits these Reply Comments in response to the Commission's Fifth Notice of Proposed Rule Making (hereinafter "Notice"), Mass Media Docket No. 92-266,¹ dealing with specific rate regulation issues affected by the Cable Television Consumer Protection and Competition Act of 1992 (hereinafter "the Act").² For the reasons set forth below, the NHL urges the Commission to adopt the positions of commenting parties and reject any rate formula that would fail to distinguish between residential and commercial rates.

In its Notice of Proposed Rulemaking, the FCC proposed to limit cable operators' freedom in dealing with commercial establishments, suggesting that it might require a rate formula that would equalize residential and commercial rates.

¹Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38, ___ FCC Rcd. ___, 59 Fed. Reg. 18064 (1994).

²Pub. Law 102-385, 102 Stat. 1460 (1992).

The Commission sought comments as to whether the proposal was practical and, if so, how it should be accomplished.

Significant financial benefits flow to commercial establishments as a result of carrying sports programming.³ See, for example, Comments of National Cable Television Association at 18; Comments of Time-Warner Cable at 34-35; Comments of Rainbow Programming Holdings, Inc. at 4; and Comments of Affiliated Regional Communications, Ltd. at 5-6. The Commission's proposal would enhance the benefits to those sports bars -- entities seeking an economic gain, as opposed to the residential subscriber. Yet not a single commenter favored the FCC concept, not even those who apparently would profit from it.

Of equal importance, however, is that the Commission's proposal is antithetical to its position in the just-released Sports Migration Report.⁴ There the FCC recognized that "migration" simply had not taken place in the sports industry. See Report at Paragraphs 174-75. But, as the NHL pointed out

³See, e.g., Cheers, Jan/Feb, 1994, at 42 ("The America's Original Sports Bar unit in Minnesota's Mall of America . . . moves a staggering 6,500 cases of beer per month"); Business First-Columbus, May 23, 1994 (describing the new NFL charges as "a drop in the bucket to what we can get back in food and liquor sales"); and Hotel and Motel Management, October 4, 1993 (properties in the Hilton Hotel chain are adding sports bars "as a way to attract customers.").


⁴Final Report in PP Docket No. 93-21, 59 Fed. Reg. 35631, ___ FCC Rcd. ___, ___ RR 2d ___ (June 330, 1994).

in its Comments, if the Commission moves forward with its sports bar proposal, teams may have to re-evaluate their position relative to basic tier carriage. In order to make up for the anticipated significant short-fall from an inability to sell to commercial establishments, teams might be forced to consider moving games off of the basic tier and onto a non-regulated tier which could raise the migration specter.

The NHL again urges the Commission not to adopt a short-sighted interpretation, displacing a significant share of the cable market by imposing special limitations on commercial rates.

Respectfully submitted,

NATIONAL HOCKEY LEAGUE


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